IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-12-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE J.A.K. SAMPATH KUMAR

W.P.NOs. 2529 of 1999, 20168 to 20173, 17945, 19396, 20677 of 1998, 776 to 778,1442, 1443, 1924, 1925,, 3090, 6200 to 6204, 6413, 6414, 7788, 8521, 8653, 12761, 12917 to 12922, 13132, 13135, 13204 to 13207, 13571 to 13575, 13691, 13692, 13718, 13719, 13895 to 13897, 13976, 13977, 14086 to 14088, 14130 to 14135, 14156, 14157, 14191, 14192, 14445, 14464 to 14468, 14696 to 14699, 14861, 15830, 15831, 16747, 17654, 17726, 17848, 17849, 18075, 18324, 18698, 18704, 19204, 19265, 19704, 20140, 20322, 20496, 20497 of 1999, 397, 2976, 8679, 10265, 10535, 10656, 10657, 10724, 10881, 15426 to 15428, 15697, 18689, 20200 of 2000, 1359 of 2001, 20428, 20815, 22593, 23762, 27927 & 27928 of 2004

and

WMP.Nos.27171, 29393, 29394, 31252/98, 1031 to 1033, 2763, 2764, 3596 8942 to 8946, 9229, 9230, 11114, 12042, 23352, 12232, 18310, 18520 to 18522, 18823 to 18826, 18952 to 18955, 19529 to 19533, 19717, 19718, 19759, 19760, 20020 to 20022, 20156, 20157, 20332 to 20334, 20394 to 20399, 20429, 20430, 20489, 20490, 20900, 20924 to 20928, 21248, 21250, 21478, 22885, 25679, 25680, 25800, 25972, 25973, 26748, 26749, 27324, 28124, 28210, 29574, 29838, 29839, 30098, 30099, 24267, 27319, 27320, 26283 of 1999, 574, 4578, 16393, 14805, 10657, 27062 of 2000, 7275 of 2001, 33947, 33948, 25055, 24586, 28810, 27317 of 2004 and 1403 of 2005

सत्यमेव जयते

M/s.Sri Balaji Minerals
rep. by its Proprietor
V.Ranghuramachandran ..Petitioner in WP 2529/99

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M/s. Imperial Granites, rep.by its
General Manager, Vedantham ..Petitioner in WP 20168/98
& 20169/98 to 20173/98

G.Vellaimurugan ..Petitioner in WP No.17945/98

A.Anbaruvi ..Petitioner in WP 19396/98

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E.C.Seniappan
Prop. Annamar Granites,
Erode ..Petitioner in WP 20677/98

Pallava Granite Industries,
rep. by its Managing Partner
K.Subba Reddy ..Petitioner in WP 776/99 and 20428/04

M/s.Petty Granites rep.by its
Managing Partner K.Subba Reddy..Petitioner in WP 777/99 and 8521/99

M/s. Premier Enterprises rep. by its
Proprietor M.Kandaswamy ..Petitioner in WP 778/99

M/s.Enterprising Enterprises, rep.
by its Partner K.Badrinarayanan ..Petitioner in WP 1442/99, 13571/99, 1443/99, 19204/99, 10265, 10881/2k, and WP.20815/04

M/s. Gem Granites rep. by its
General Manager, Vedantham ..Petitioner in WP 1924/99 1925/99 & 13132/99

M/s. Shanmuga Industries rep.
by its Managing Partner T.K.Pitchan ..Petitioner in WP 3090/99

M/s. M.S.Granites rep. by its
Proprietor, S.Sankaranarayanan ..Petitioner in WP No.6200/99

P.Rajasekaran ..Petitioner in WP 6201/99

P.Senthil Kumar ..Petitioner in WP 6202/99

K.Murugesan ..Petitioner in WP 6203/99

M/s. Lakshmi Enterprises, rep. by its
Managing Partner P.K.Selvaraj ..Petitioner in WP 6204/99

V.K.Kottaiveeran ..Petitioner in WP No.6413/99 6414/99

Prem Anand ..Petitioner in WP 7788/99

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K.R.Muthu @ Valampuri Muthu
rep. by Power of Attorney Holder
N.Ranganathan ..Petitioner in WP 8653/99

Swan Stonarts(P) Ltd., rep. by its
Managing Director M.D.Venkatesan ..Petitioner in WP 12761/99

Pluto-D-Granites a Partnership Firm
rep. by its Managing partner
P.K.Selvaraj ..Petitioner in WP No.12917 to 12922/99

M/s. Imperial Granites Ltd,
rep by its General Manager,
Vedantham .. Petitioner in W.P.13135/95

C.Krishnappa Gounder ..Petitioner in WP 13204/99

S.Sumathi ..Petitioner in WP 13205/99 & 13206/99

Royal Granites rep. by its
Partner Zameer Basha ..Petitioner in WP 13207/99

M/s. Sakthi Enterprises, rep. by its
Partner C.Ramasamy ..Petitioner in WP No.13572/99 & 13573/99

A.Rajamani
Mahalaklshmi Enterprises ..Petitioner in WP 13574/99

P.Jayaraj ..Petitioner in WP 13575/99

R.P.M.Exports rep. by its
Proprietor R.P.Murugan ..Petitioner in WP 13691/99 & 13692/99

M/s. K.M.B.Granites
rep. by its Managing Partner
K.Yusuff Basha ..Petitioner in WP 13718/99

M/s. Global Trading Company rep.
by its Managing Partner

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K.M.Kadeer Mohideen ..Petitioner in WP.13719/99

R.V.Granites rep. by its Proprietor
J.Premalatha ..Petitioner in WP 13895 to 13897/99

M/s. Amman Granites rep. by its
(General) Manager R.Chandrasekaran ..Petitioner in WP 13976 & 13977/99

M/s. Vig Sans Granites rep.. by its
Prioprietor G.Palanisamy ..Petitioner in WP 14086/99

M/s. Indian Furniture Works
rep. by its Parnter N.K.Ashwath Rama ..Petitioner in WP 14087/99

P.Meenakshi
M/s. Sankarar Granites ..Petitioner in WP 14088/99

M/s.Amman Granites Export (P) Ltd.,
rep. by its Managing Director,
M.Masi ..Petitioner in WP 14130 & 14131/99

M.Mase ..Petitioner in WP 14132/99 to 14135/99

M/s. Indira Granites rep. by its
Partner V.Venkateswaran ..Petitioner in WP No.14156/99

M/s.Rani Granites rep. by its
Managing Partner K.Yusuf ..Petitioner in WP 14157/99

M/s. Amman Granites rep. by its
Partner M.Mase ..Petitioenr in WP 14191/99 & 14192/99

M/s. Evershine Granites rep. by its
Partner Asghar Ahmed Pasha ..Petitioner in WP 14445/99

B.Venkatesh ..Petitioner in WP 14464/99 to 14466/99

B.Shanmugam ..Petitioner in WP 14467 & 14468/99

A.Latha ..Petitioner in WP 14696/99 & 14698/99

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A.Anbaruvi ..Petitioner in WP 14697/99 & 14699/99

M.D.Anandan ..Petitioner in WP 14861/99 and W.P.No.27928/04

A.Latha, through her Power of Attorney N.Renganathan ..Petitioner in WP Nos.15830/99 & 15831/99

B.R.Manoharan ..Petitioner in WP Nos. 16747 & 18698/99

Always Exports, rep. by its Managing Partner S.Kumari Kanagam ..Petitioner in WP 17654/99

G.Nagarathanamma ..Petitioner in WP 17726/99

A.K.Pounraj ..Petitioner in WP Nos.17848 & 17849/99

Mahalakshmi Enterprises rep. by' its Proprietress A.Rajamani ..Petitioner in WP 18075/99

M/s. Amman Granites rep. by its Partner M.Mase ..Petitioner in WP 18324/99

M/s. Shyms Granites rep by its Managing Partner K.Y. Basha ... Petitioner in W.P.18704/99

M.Duraisamy ..Petitioner in WP No.19265/99

M/s.Imperial Granites (P) Ltd., rep. by its Director ..Petitioner in WP 19704/99

A.Thimmarayan ..Petitioner in WP 20140/99

M/s. Venkateswara Mines rep. by its Managing Partner K.P.Raju ..Petitioner in WP 20322/99

Karunai Granites (P) Ltd., rep. by its Managing Director, K.Karunakaran ..Petitioner in WP 20496 & 20497/99

P.Jayaraj ..Petitioner in WP 397/2000

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S.Baskaran ..Petitioner in WP 2976/2000 and W.P.No.10657/2000

Sundaram Granites rep. by its Managing Parnter
V.K.Nalliyappan ..Petitioner in WP 8679/2000

National Granites (P) LTd., rep. bhy its Managing Director, N.Kokila ..Petitioner in WP 10535/2000

V.K.Sundaram ..Petitioner in WP 10656/2000

M/s.Kunnam Granites works rep. by its Managing Parnter
G,.Rajaretnam ..Petitioner in WP 10724/2000

M/s. Syhims Granites rep. by its Parnter K.Yusuff Basha ..Petitioner in WP Nos. 15426 & 15427/2000

M/s. Om Sakthi Granites rep. by its Parnter E.Dhanapal ..Petitioner in WOP 15428/2000

K.Panneerselvam ..Petitioner in WP 15697/2000

R.P.M.Exports rep. by its Proprietor R.P.Murugan ..Petitioner in WP 18689/2000

K.S.N.& Company rep. by its Proprietor G.Gopal ..Petitioner in WP 20200/2000

N.Tamilselvi ..Petitioner in WP 1359/2001

M/s. Pallava Granite Industries, rep. by its Parnter K.Sailaja Reddy..Petitioner in WP 22593/2004

N.Deivendran ..Petitioner in WP 23762/2004

Tmt. A.Raja Mani ..Petitioner in WP 27927/2004

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-vs-

The State of Tamil Nadu rep. by
Secretary to Govt. Industries Dept.
Fort St. George, Chennai -9. ..1st Respondent in WP No.2529/99, 20168/98,20169 to 20173/98,17945/98, 19396, 10677, 776 to 778/99 1442 & 1443/99 1924 & 1925/99 3090/99, 6200 to 6204/99, 6413, 64141/99, 7788, 8521, 8653/99,12761,12917 to 12922/99, 13132,13135, 13204 to 13207/99, 13571 to 13575/99, 13691 & 13692/99, 13718 ^ 13719/99, 13976 to 13897/99, 13976 &13977, 14086 to 14088, 14130 to 14135/99, 14156, 14157, 14191, 14199, 14445,14464 to 14468, 14696 to 14699, 14861, 15830, 15831, 16747, 17654, 17726, 17848, 17849, 18075, 18324, 18704, 19204, 19265, 19704, 220140, 20322, 20496, 20497/99, 397/2000,2976,8679,10535,10724 , 15426 to 15428, 15697, 18689,20200/2000, 1359/01, 20815, 22593, 23762/2004.

The District Collector
Krishnagiri,
Krishnagiri District 1st Respondent in WP.No.27927/04, 27928/04

The District Collector,
Namakkal,
Namakkal District 2nd Respondent in WP.No.17726/99, 19265/99 and Respondents in W.P.No.10656/2k

The District Collector,
Vellore,
Vellore District 2nd Respondent in WP.No.19204/99. Respondent in WP.No.10881/2000

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The District Collector,
Pudukkottai,
Pudukkottai District. — 2nd Respondent in WP.No.2976/2000
Respondent in WP.No.10657/2000

The District Collector,
The Collector of Villupuram,
Villupuram District — 1ST rESPONDENT IN w.pS.20428/04
2nd Respondent in WP.No.2529/99, 776 to 778/99, 1442 & 1443/99, 1924 & 1925/99, 3090/99, 8521/99. WP.No.20815/04, 22593/04

The Deputy Director of Mines,
Dharmapuri — 2nd Respondent in WP.No.18698/99.

The District Collector, Karur
Karur District — 2nd Respondent in W.P.10724/2k, 15426 to 15428/2k, 15697

The District Collector,
Thiruvannamalai District,
Thiruvannamalai. — 2nd Respondent in WP.No.20168/98, 20169 to 12173/98, 17945/98, 13976 & 13977/99, 14130 & 14131/99.

The Assistant Director of Geology & Mining
Krishnagiri — 2nd Respondent in WP.No.27927/04, 27928/04

The District Collector,
Salem
Salem District. — 2nd Respondent in WP.No.17654/99, 18075, 18704, 19704, 20322, 20496, 20497/99, 397/2000, 10535

The Assistant Director of Geology & Mining,
Villupuram. — 2nd Respondent in WP.No.20428/04.

The District Collector,
Erode,
Erode District — 2nd Respondent in WP.No.19396/98, 20677, 12761/99.

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The District Collector,
Dharmapuri,
Dharmapuri District. — IST RESPONDENTINW.PS. 18698/99 AND 10265/2000
2nd Respondent in WP.Nos.12917 to 12922/99, 13132, 13135, 13204 to 13207/99, 13571 to 13575/99, 13691 & 13692/99, 13718 & 13719, 13895 to 13897/99, 14086 to 14088/99, 14132 to 14135/99, 14156 & 14157, 14191, 14192, 14445, 14464 to 14468, 14696 to 14699, 14861, 16747, 17848, 17849, 18324, 20140/99, 8679/2000.AND, 18689, 20200/2k
3rd Respondent in WP.No.15830/99, 15831

The District Collector,
Madurai,
Madurai District — 2nd Respondent in WP.No.6200 to 6204/99, 6413, 6414/99, 8653/99, 1359/01, 23762/04.and
2nd Respondent in WP.No.7788/99.

The Commissioner of Geology & Mining
Industrial Estate,
Guindy, Chennai - 32. — 3rd Respondent in WP.No.2529/99, 20168/98, 20169 to 20173/98, 19396/98, 1924 & 1925/99, 13132, 13135/99, 13691 & 13692/99, 14130 to 14135/99, 14191, 14192, 18324, 19704, 20496 & 20497/99, 18689/2000. and 2nd Respondent in WP.No.15830/99,15831.

The Director of Geology & Mining
Chennai - 32
Industrial Estate,
Guindy. — 3rd Respondent in WP.No.7788/99, 17848 & 17849/99.

The Deputy Director of Geology & Mining
95, Sankari Nagar,
Salem - 7. — 3rd Respondent in WP.No.17654/99.

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The Deputy Director of Geology & Mining
Salem, Salem District 3rd Respondent in WP.No.20322/99.

Prayers in all WPs

I. Petitions filed under Article 226 of the Constitution of India to issue a writ of declaration declaring Rule 1. 8E of the Tami nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms. No. 603/Industries 17.9.1998 and the consequential proceedings of the 2nd Respondent made in Ref A/G&M/1615-98-1 dated 18.12.98 as unconstitutional and illegal WP.No.2529/99.

2. 8E of the Tami nadu Minor Mineral Concession Rules 1959 as orbitrary and violative of Article 14 & 19 (1) of the constitution of India is so far as the petitioner is concerned. WP.Nos.20169/98, 20171, 20173/98 1924/99, 13135/99, 13692/99, 14131, 14133 & 14133 & 14135/99, 14192, 20140, 20497,

3. 8E of the Tami nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms. No. 603/Industries (MMC,1) Department dated 17.9.1998 and the order of the second respondent in Na. Ka. No.768/Minerals/98-7 dated 15.10.1998 as illegal untra vires, WP.No.17945/98.

4. 8E of the Tami nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms. No. 603/Industries (MMC,1) Department dated 17.9.1998 and the order of the second respondent bearing Ref.No.81650/98/X-2 Mines dated 28.10.1998 in respect of the petitioner's lease hold quarry measuring 0-52-5 Hectares comprised in Survey.No.S.F.No.176/part and 177/Part situated in Chikkakajanur Village, Sathyamangalam Taluk, Erode District illegal ultra vires (WP.No.20677/98)

5. 8E of the Tamil Nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms.No.603/Industries (MMC.1) Department dated 17.09.98 and the order of the Second Respondent bearing Ref. A/G&M/1613/98-1 dated 18.12.98 in respect of the petitioner's lease hold quarry measuring 5-02-0 Hectares comprised in R.S.No.03 situated in SEMANGALAM Village, Vanur Taluk, Villupuram District as illegal, ultra vires. (W.P.776/99)

6.8E of the Tamil Nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms.No.603/Industries (MMC.1) Department dated 17.09.98 and the order of the Second Respondent bearing Ref. A/G&M/1617/98-1 dated 18.12.98 in respect of the petitioner's lease hold quarry measuring 0-08-0 Hectares comprised in R.S.No.17

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situated in PERUMBAKKAM Village, Vanur Taluk, Villupuram District as illegal, ultra vires. (W.P.777/99)

7. 8E of the Tami nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms. No. 603/Industries (MMC,1) Department dated 17.9.1998 and the order of the second respondent bearing Ref. A/G & M/1618/98-1 dated 18.12.1998 in respect of the petitioner's lease hold quarry measuring 0-59-0 Hectares comprised in R.S.No.8/5 situated in Kunnam Village, Vanur Taluk, Villupuram District as illegal, ultra vires (WP.No.778/99).

8. 8E of the Tami nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms. No. 603/Industries (MMC,1) Department dated 17.9.1998 and the order of the second respondent bearing Ref A/G&M/1611/98-1 dated 18.12.1998 in respect of the petitioner's lease hold quarry measuring 1-30-5 Hectares comprised in R.S.No.47/4 situated in Kannam Village, Vanur Taluk, Villpuram District of as illegal, ultra vires as for as the petitioner is concerned (WP.No.1442/99)

9. 8 E of the Tamil Nadu Minor Minweral concession Rules 1959 introduced by GO.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the order of the 2nd respondent bearing Ref.A/G&M/1619/98-1 dated 18.12.98 in respect of the petitioner's lease sold quarry measuring 5-06-5 Hectares comprised in R.S.Nos.24/1 and 13/1 situated in Semangalam Village, Vanur Taluk, villupuram District as illegal, Ultravires as far as the petitioner is concerned. WP.No.1443/1999.

10. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent bearing Ref.A/G&M/1614/98-1 dated 18.12.98 in respect of the petitioner's lease hold quarry measuring 1-13-5 Hectares comprised in RS.No.29/3 [Old NO.168/5] situated in Kunnam Village, Vanur Taluk, Villupuram District as illegal ultravires.WP.No.3090/99.

11. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent bearing Roc.No.Mines/1495/98 dated 19.2.1999 in respect of the petitioners lease hold quarry measuring 1-73-5 Hectares, 2.00 Acres, 1-20-0 Hectares, 1-20-0 Hectares, 5 acres comprised in SF.Nos.267/2, 154/1, 261/2, 3 and 297/5, 297/5[Part] and 525/1 situated in Keelavalavu Village, Madurai Taluk, Madurai District, Idayapatti Village, Madurai North Taluk, Madurai District Keelavalavu village, Melur Taluk, Madurai District Thiruvadavoor Village, Melur Taluk, Madurai District as illegal, Ultravires respectively WP.Nos.6200 to 6204/99.

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12. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent bearing Ref.ROC.No.Mines 1495/98 dated 19.2.99 in respect of the petitioners lease hold quarry measuring 1.00 Acres 1.00 Acres comprised in Survey S.F.Nos.70/3, 99, situates in Keelaiyur Village, Melur Taluk, Madurai District as illegal, ultra vires respectively WP.Nos.6413 and 6414/99.

13.8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent bearing Ref.A/G&M/1616/98-1 dt. 18.12.98 in respect of the petitioner's lease hold quarry measuring 2-00 Hectares comprised in R.S.No.01, situated in Poonampoondi Village, Vanur Tk, Villupuram District as illegal, ultravires.WP.No.8521/99.

14. 8E of the Tami nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms. No. 603/Industries (MMC,1) Department dated 17.9.1998 and the order of the second respondent bearing Reference Number 81650/98/X-2/Minies dated 3.3.1999 in respect of the petitioner's lease hold quarry measuring 0-40-5 Hectares comprised in S.F.No.396/1(part) situated in Thingalur Village, Sathyamangalam Taluk, Erode District as illegal and ultra vires in so far as the petitioner is concerned (WP.No.12761/99).

15. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 as illegal, ultravires. WP.Nos.12920 to 12922/99, 14698, 14699, 15831.

16. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent bearing NA.KA.2022/97/A, 1767/97/A, 1802/97/E MINES, NA.KA.2022/97/A, 1767/97/A 1802/97/E, Mines dated 26.6.99, 21.6.99, 24.6.99, 24.6.99 in respect of the petitioner's lease hold quarry measuring 2-02-5 Hectares, 1-21-5, 0-81-0, 1-00-0 Hectares comprised in Survey S.F.Nos.609/A[Part], 1 [Part], 243[Part], 38 situated in Nagojanahalli Village, Pochampalli Taluk, Dharmapuri District, Madakkal Village, Denkanikottai Taluk, Dharmapuri District, Marichettihalli Village, Krishnagiri Taluk, Dharmapuri District, Peddapampatty Village, Pochampalli Taluk, Dharmapuri District as illegal, Ultravires respectively WP.Nos.13204 to 13207/99.

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17. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent bearing Na.Ka.1758/97 A, 439/99/C, 2465/96/C, 2110/97/A, 1804/97 1A Mines dated 24.6.99, 28.6.99, 28.6.99, 21.6.99, 24.6.99 in respect of the petitioner's lease hold quarry measuring 4-05-0, 5.25[2-12-5], 9.71[3-93-0], 2-0205, 0-40-5 Hectares comprised in Survey S.F.Nos.401, 199[Portion A] 197, 629[Part] 57/1 part situated in Chandarapalli Village, Krishnagiri Taluk, Dharmapuri District Sellaguddapatti Village, Krishnagiri Taluk, Dharmapuri District Nagamangalam Village, Thenkanikottai Taluk, Dharmapuri District Jagadevipalayam Village, Krishnagiri Taluk, Dharmapuri District as illegal, Ultra vires respectively WP.No.13571 to 13575/99.

18. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent bearing Na.Ka.1766/97/A, 2112/97/A, 1973/97/AA, 2023/97/AA, 1805/97/A, Mines dated 21.6.99, 24.6.99, 21.6.99, 21.6.99, 26.6.99 in respect of the petitioner's lease hold quarry totally measuring 4.00 Acres [1.62.0 Hectares], 5 acres [2.02.5 Hectares], 0.81.0 Hectares, 1.62.0, 1.62.0 Hectares comprised in Survey S.F.No.374/5 [part], 629[part], 629[part], 201 part, 95 part, situates in Jakkeri Village, Denkanikottai Taluk, Nagamangalam village, Nagamangalam Village, Jakkeri Village, Modikuppam Village, Denkanikottai Taluk, Dharmapuri District as illegal ultravires respectively [WP.Nos.13718, 13719 and 13895 to 13897/99];

19. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent in Na.Ka.768/Minerals/98/4, 768/Minerals/98/2, dated 15.10.98 and 2.7.99 as illegal ultravires.WP.Nos.13976 and 13977/99.

20. 8 E of the Tami Nadu Minor Mineral concession Rules 1959 introduced by G.O.Ms.No.603/Industries [MMC-1] Department dated 17.9.98 and the Order of the 2nd Respondent bearing Na.Ka.1760/97/A, 1761/97/A, 1806/97/A[Mines] dt. 24.6.99, 26.6.99, 24.6.99 in respect of the petitioner's lease hold quarry measuring 0.61.0 hectares, 2 acres [0.81.0] hectares, 2 acres [0.81.0 Hectares] comprised in Survey SF Nos.216/9, part, 271 part, situated in Chendarapalli Vilalge, Kaveripattinam Village, Kaveripattinam Village, Krishnagiri Taluk, Dharmapuri District as illegal ultravires WP.Nos.14086 to 14088/99.

21. 8-E of the Tamil Nadu Minor Mineral Concession Rules 1959 introduced by G.O. Ms. NO. 603/Industries (MMC-1) Department dated 17.09.1998 and the order of the 2nd Respondent bearing Na. Ka. NO. 1970/97A 1972/97/A mines dated 21.06.1999 in respect of the

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Petitioners lease hold quarry measuring 10.00 acares, 4-05-0, 4-04-0 Hectares comprised in Survey SF NO. 629 past situated in Nagamangalam Village, Denkanikottai Taluk, Dharmapuri District as illegal ultra vires WP NOS. 14156 and 14157/99

22. 8E of the Tamil Nadu Minor Mineral Concession Rules 1959 introduced by G.O. Ms. NO. 603 Industries (MMC 1) Department Dated 17.09.1998 and the order of the 2nd Respondent bearing Na. Ka. No. 1803/97/A, 1343/99/C 680/98/c, 1764/97/e, 1484/97/B, 2021/97/B Mines dated 24.06.1999 , 28.06.1999, 26.6.1999, 25.06.1999, 21.06.1999, 21.6.1999, in respect of the petitioners lease hold quarry measuring 3.00 Acres (1-21-5,) 0-25-5 Hectares, 0-81-0, 1-21-5, 1-21-5, 0-41-0 Hectares comprised in Survey S.F. NO. 141 oart, 15/3, 609/A Part, 15/1, 629 part 629 (part) situated in Chendrapalli Village, Krishnagiri Taluk, Dharmapuri District, Vilangamudi Village, Pochampalli Taluk, Nagarjunahalli, Village Krishnagiri Taluk.Vilangumudi Village, Pochampalli Taluk, Nagamangalam Village, Denkanikottai Taluk, Dharmapuri District as illegal ultra virus respectively WP NOS. 14445, 14464 to 14468/99

23.8 E of the Tamil Nadu Minor Mineral Concession Rules 1959 introduced by G.O. Ms. NO. 603 Industries (MMC 1) Department Dated 17.09.1998 and the order of the 2nd Respondent bearing Na. Ka. No. 2113/97/A, 1346/99/AA (Mines) dated 21.06.1999, 25.06.1999 in respect of the petitioners lease hold quarry measuring 0-81-0-Hectares, 1-00 acre comprised in Survey SF NO. 629, 391 PART SITUATED in Nagamangalam Village, Denkanikottai Taluk, Dharmapuri District, Thatrahalli Village, Krishnagiri Taluk as illegal ultravirues WP NOS. 14861 and 16747/99

24.8 E of the Tamil Nadu Minor Mineral Concession Rules 1959 and the order of the 2nd Respondent bearing ROC NO. 732/99 Minese dated 23.10.199 in respect of the petitioner's lease hold quarry measuring 4-05-0 Hectares.comprised in RS NO. 1/1 (Part) situated in Margini Village Salem District as illegal ultravires WP NO. 17654/99

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25. 8 E of the Tamil Nadu Minor Mineral Concession Rules 1959 as introduced by G.O. Ms. No. 603 Industry dated 17.09.1998 and the proceedings of the 2nd Respondent made in ROC NO. 732/99 Minese dated 23.10.199 as unconstitutional and illegal WP NO. 17726/99

26. 8 E of the Tamil Nadu Minor Mineral Concession Rules 1959 as introduced by G.O. Ms. No. 603 Industtird (MMC-1) Department dated

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17.09.1998 and the order of the 2nd Respondent bearing ROC NO. 1763/97/A/Minerals 2128/97/B/ Minerals dated dated 1.7.1999, 24.06.1999 in respect of survey No. 288/1 measuring 0-81-0, 1-01-0 hectares in Jegadevi Palayam, Krishnagiri Taluk, Agalakotai, Denkanikottai Taluk, Dharmapuri District as illegal ultravirus WP NOS. 17848 and 17849 of 1999.

27. 8 E of the Tamil Nadu Mines Mineral Concession Rules 1959 introduced by G.O. Ms. NO. 603, Industries (MMC-1) Department dated 17.09.1998 and the order of the 2nd Respondent bearing ROC NO. 732/99 Mines C 668/96, 732/99/Mines/C dated 23.10.1999, 23.10.99, 19.11.1999, 23.10.1999 in respect of the petitioners lease hold quarry measuring 1-21-5, 1-62-0, Hectares, 2-50, Acres, 0.40.5 Hectares comprised in RS NO. 3 (Part) 89/3, 587/1, 358 situated in Kaveripuram Village Mettur Taluk, Devannagoundanur Village, Sankari Taluk, Salem District Makimandalam Village, Katpadi Taluk, Vellore District, Thirumalaipatty Village, Namakkal Taluk, Namakkal District as illegal ultravirus respectively WP NOS. 18075, 18704, 19204 and 19265/99.

28. Rule 8E of the Tamil nadu Minor Mineral Concession Rules 1959, as introduced by G.O. Ms. NO. 603 Industries Department dated 17.09.1998 and the consequential proceedings of the 2nd Respondent in ROC NO. 732/99 Mines C dated 23.10.1999 as unconstitutional and illegal in so far as the petitioner is concerned WP NO. 19704/99

29. 8e of the Tamil Nadu Minor Mineral concession Rules 1959 introduced by G.O. Ms. No. 603, Industries (MMC-1) department dated 17.09.1998 and the order of the respondents bearing ROC NO. 732/99, dated 23.10.99, 469/98 (G) dated 29.01.2000, in respect of the petitioners lease hold quarry measuring 1 acre, 1 acre, 0-56-50 Hectares comprised in RS NO. 153/1 SURVEY SF NO. 103/4, 170/1 situated in Gudamalai Village Attur Taluk, Devannagounder village, Sankari Taluk, Salem District Ammachathiram Village, Kulathur Taluk, Pudukkotai District illegal ultravires respectively WP NOS. 20322/99397/2000, 2976/2000

30. 8E of the Tami nadu Minor Mineral Concession Rules 1959 introduced by G.O.Ms. No. 603/Industries (MMC,1) Department dated 17.9.1998 and the order of the second respondent bearing Na. Ka. No.1348/99/Aa/(Mines) dated 25.6.99 in respect of the petitioner's lease hold quarry measuring 4-04-5 Hectares comprised in Survey.No.642(part) situated in Nagojanahalli Village, ultra vires (WP.No.8679/00).

31.8E of the Tamil nadu Minor Mineral Concession Rules 1959 as introduced by G.O. Ms. NO. 603 Industries (MMC-1) Department dated

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17.09.1998 and the proceedings of the 2nd Respondent made in ROC NO. 732/99 Mines-C dated 23.10.1999 as constitutional and illegal WP NO. 10535/00

32. 8-E of the Tamil Nadu Minor Mineral Concession Rules, 1959 as introduced by G.O.Ms.No.603 Industries (MMC-1) Department, dated 17.9.1998 and the order of the 2nd respondent bearing NA.Ka.D.464/95 dated 24.5.2000 in respect of the petitioners lease hold quarry measuring 3.00 acres comprised in Survey No.239 (Part) situated in Thogamalai Village, Kulithalai Tk, Karur Dt as illegal ultra vires W.P.No.10724/2000.

33. 8-E of the Tamil Nadu Minor Mineral Concession Rules, 1959 as introduced by G.O.Ms.No.603 Industries (MMC-1) Department, dated 17.9.1998 and the order of the 2nd respondent bearing NA.Ka.D.496/95, 495. 560/95 dated 24.5.2000 , 1.6.2000 in respect of the petitioners lease hold quarry measuring 2.00 acres comprised in Survey No.441/4 and 442 part , 239 part, 239 part situated in Kahugar Village, Thogamalai Village, Thogamalai Village, Kulithalai Tk, Karur Dt. (Formerly Tiruchy Dt) as illegal ultravires respectively W.P.Nos.15426 to 15428/2000.

34. 8-E of the Tamil Nadu Minor Mineral Concession Rules, 1959 as introduced by G.O.Ms.No.603 Industries (MMC-1) Department, dated 17.9.1998 and the order of the 2nd respondent made in Ref.No.NA.Ka.D/559/95, 1974/97 B minerals 21.6.199 dated 1.6.2000 , dated 21.6.1999 as unconstitutional and illegal W.P.No.15697/2000, 20200/2000.

35. 8-E of the Tamil Nadu Minor Mineral Concession Rules, 1959 as introduced by G.O.Ms.No.603 Industries (MMC-1) Department, dated 17.9.1998 and the order of the 2nd respondent bearing R.O.C.No. Mines 1495/98/A, R.C.No.A/G & M/3429/03 R.C.No.A/G & M/ / 3426/03 dated 9.7.04, 29.7.04 in respect respect of the petitioners lease hold quarry measuring 0-46-5, 1-30-5, 5-02-0, Hectares comprised in Survey S.F.No.84/1, S.No.47/4, R.S.No.03 situated in Sakkarapanickanur Village, Usilampatti Tk, Madurai District, Kunnam Village, Vanur Tk Villupuram District, Semangalam Village, Vanur Tk, Villupuram District as illegal ultravires W.P.Nos. 1359/01, 20815/04, 22593/04, respectively.

36. 8-E of the Tamil Nadu Minor Mineral Concession Rules, 1959 as introduced by G.O.Ms.No.603 Industries (MMC-1) Department, dated 17.9.1998 and the Demand notice of the 2nd respondent made in ROC NO. Mines/ 2206/97 dated 26.7.2004 as unconstitutional and illegal W.P.NO.23762/04.

II. Petitions filed under Article 226 of the Constitution of India

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to issue a writ of certiorari calling for the records of the 2nd respondent dated 15.10.1998 having Ref No. Na.Ka.No.768/Mines/98-3 and 5 in WP.20170/98 and quash the same (WP.no.20168/98)

calling for the records of the 3rd respondent dated 17.8.1999 having Ref.Na.Ka.22/99/(A)/Mines and quash the same and consequently direct the respondents to permit the petitioner to quarry black granites over an extent of 0.40.5 Hecatres acres in Government Poromboke land in S.No.285 Adhikarapatti Village, Pappireddy Patti Taluk, Dharmapuri District as per terms and conditions contained in lease deed executed pursuant to G.O.3 (D) No.181 dated 27.6.1995. (WP.No.18689/2000)

2. dated 15.10.1998 having ref No.Na.Ka.No.768/Mines/98-6 and quash the same WP.No.20172/98

3. to issue a writ of certiorari calling for the records of the 2nd respondent dated 18.12.1998 having ref A/G&M/1612/98-1 and quash the same WP.No.1925/99.

4. Ref.No.81650/98/X-2 Mines dated 28.10.1998 quash the same WP.No.19396/98.

5. Order of the Collector of Madurai, Madurai [2nd respondent] in ROC.No.Mines.1495/98 dt. 19.2.99 quash the same, WP.No.7788/99, 8653/99.

6. order passed by the 2nd respondent in Na.Ka.No.1827/97/13 2130/97/C.1, 2018/97/A.1 Mines dated 21.6.99, 24.6.99 and 24.6.99 and quash the same. WP.Nos.12917 to 12919/99.

7. 2nd respondent dated 21.6.99 having ref.No.NaKa.No.1971/97/Aa.Mines and quash the same. WP.No.13132/99.

8. 2nd Respondent dt. 28.5.99 having Ref.No.Na Ka.No.22/99/Mines and quash the same. WP.No.13691/99.

9. 2nd Respondent dated 02.07.1999 and 24.06.1999, 24.06.99 having ref No. Na. Ka. NO, 768/Mines/98-1 1344/99/A(Mines), 1762/97-A. And quash the same WP 14130, 14132, 14134/99.

11.the Second Respondent in Na. Ka. No. 1807/97 A Mines 1485/99 C Mines, and quash the same WP NOS. 14696, 14699/99

11. 2nd Respondent dated 28.05.1999 having ref No. Na. Ka. 021/99/Vu.Mines and quash the same WP NO. 14191/99.

12. the 3rd Respondent in Na. Ka. No. 1051/97/C (Mines) dated 24.06.1999 and quash the same WP NO. 15830/99.

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13. 1st Respondent herein in Roc. No. 1346/99 (A) Mines, dated 18.10.1999 and quash the same and direct the respondents herein to issue transport permit in favour of the petitioner herein for transporting granite blocks quarried in survey No. 391 part Thatratalli Village, Krishnagiri Taluk to the place of his choice WP NO. 18698/99

14. 2nd Respondent dated 17.08.1999 having ref NO. Na. Ka.NO. 21/99 (Aa Mines) and quash the same WP NO.18324/99 and

15. 2nd Respondent dated 23.10.1999 having ref NO. 732/99/ Mines-C and quash the same WP NO. 20496/99. respectively.

III. Petitions filed under Article 226 of the Constitution of India to issued a writ of Mndamus directing the respondent to forbear from interfering with the petitioners right to quarry and transport
1. the mineral on payment of necessary seignorage from granite quarry measuring 4-05-0, 1-29-6, 0-56-50,Hecatures comprised in survey No. 401, 223 and 170/1 (part) situated in Chendrapalli Villagem Krishnagiri Taluk Dharmapuri District Ariyur Village, Namakkal Taluk, Nammal District, Ammachathiram Village, Kulathur Taluk, Pudukottai District will the lease period is over (WP NO. 10265/00, 10656 and 10657/00)

2. the mineral on payment of necessary seignorage from granite quarry measuring 2.50 Acres comprised in S.No.587/1 of Makimandalam Village, Walajoha Tk, Vellore Dt. (Formerly N.A. Dt. till the lease period is over W.P.10881/2000

3. 1st Respondent herein in Roc. No. 1346/99 (A) Mines, dated 18.10.1999 and quash the same and direct the respondents herein to issue transport permit in favour of the petitioner herein for transporting granite blocks quarried in survey No. 391 part Thatratalli Village, Krishnagiri Taluk to the place of his choice WP NO. 18698/99

4.granite process from granite quarry measuing 5-02-0 Hectares comprised in Survey R.S.No.03 situated in Semangalam, Village, Vanur Tk, Villupuram District, W.P.20428/04.

5.granite quarry measuring 2.02.5, 0.18.0 hectares comprised in Survey No.629 (Part) situated in Nagamangalam Village, Denkani kottai Tk, Krishnagiri Dt. (Formerly Dharamapuri Dt) respectively w.P.No.27927 & 27928/04) respectively.

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For Petitioners : Mr.V.T. Gopalan
Senior Counsel
Mr.V.R. Reddy,
Senior Counsel for
Mr.K. Ramakrishna Reddy &
Mr.P. Kalpa Reddy

Mrs. Nalini Chidambaram
Senior Counsel for
Mr.S. Silambanan

For Respondents : Mr.R. Viduthalai
Advocate General for
Mr.R. Thirugnanam
Special Govt. Pleader

COMMON JUDGMENT

P.K. MISRA, J

In this batch of writ petitions, the petitioners, who are the holders of leases granted under the provisions of erstwhile Rule 39 of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as "the Rules") have challenged the validity of Rule 8-E, which has been introduced as per G.O.Ms.No.603 Industries Department, dated 17.9.1998.

2. First of all it is necessary to have a bird's eye view of the various Constitutional and statutory provisions.

Entry 54 of List I of 7th Schedule of the Constitution of India is to the following effect :-

> "54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Entry 23 of List II of 7th Schedule of the Constitution is to the following effect :-

> "23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

3. The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act") Act No.67 of 1957, is a Central Act to provide for development and regulation of mines and

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minerals under the control of Union. Under Section 2 of the Act following declaration as to the expediency of Union Control has been made:-

> "2. Declaration as to the expediency of Union control - It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

Section 3 of the Act contains the definition clause. As per Section 3(a), "minerals" include all minerals except mineral oils. As per Section 3(e), "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

Under Section 3(c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose.

As per the definition of "minor minerals" and the notifications issued by the Central Government under Section 3(e) of the Act, granite and other decorative stones with which we are concerned in the present batch of cases, are minor minerals.

As per Section 4 of the Act, no person shall undertake any minor operation in any area except under and in accordance with the terms and conditions of a mining lease granted under the Act and the Rules made thereunder. Under sub-Section (2) no mining lease shall be granted otherwise than in accordance with the provisions of the Act and the Rules made thereunder.

4. Section 15 empowers the State Government to make Rules in respect of minor minerals. The relevant provisions of Section 15 are extracted hereunder :-

> "15. Power of State Governments to make rules in respect of minor minerals- (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.
>
> (1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters,namely :-
>
> (a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;
>
> ...
>
> (d) the terms on which, and the conditions subject to

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which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

...

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

...

(Incidentally it may be noted that Section 15(1A) was inserted by amendment as per Central Act 37 of 1986).

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals;

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years."

(The expression "or dead rent, whichever is more" was inserted by amendment vide Central Act 37 of 1986)

5. By virtue of such rule making power, the Tamil Nadu Government has framed Tamil Nadu Minor Mineral Concession Rules, 1959. Such Rules are being amended by the State Government from time to time. To appreciate the questions involved, it is necessary to take a journey back in time in order to notice the various Rules applicable at different times. Till 1972 quarry leases in Government lands for black granites and decorative stones were being granted through public auction as per the provisions of the Rules then existing. Subsequently, however, by G.O.Ms.No.1932 dated 16.12.1972, Rule 8-A containing several clauses and sub-clauses was inserted by amendment making specific provisions relating to lease in respect of granite. However, a total ban on grant of lease for quarrying black granites by private persons was imposed vide Rule 8-C, which was introduced in 1977, but such ban was subsequently

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lifted in 1988 vide G.O.Ms.No.1273 dated 9.12.1988 and the provisions contained in Rule 8-A became operational for granting leases for industries. Such provisions at that stage contemplated levy of dead rent or seigniorage fee, whichever was greater. In 1989, vide G.O.Ms.No.608 dated 2.9.1989, tender system was introduced with three main objectives, namely, (1) to identify the grantee of lease by a transparent method without giving room for arbitrariness (2) to get additional revenue to the State's exchequer and (3) to encourage setting up of industry of granite cutting and polishing within the State. Subsequently, a ban was imposed for quarrying granites in Government lands by private persons in G.O.Ms.No.214 dated 10.6.1992, except to those who were already issued with letter of commitment. Thereafter Rule 39 was introduced as per G.O.Ms.No.97 dated 8.3.1993, which is extracted hereunder :-

> "39. Powers of State Government to grant or renew quarry lease or permission, etc. in special cases - Nothing contained in these rules, the State Government, if in any case, are of opinion that in the interest of mineral development and in the public interest it is necessary so do so, they may, by order and for reasons to be recorded:
>
> (a) grant or renew a lease or permission to quarry any mineral;
> (b) allow the working of any quarry for quarrying any mineral;
> on terms and conditions different from those laid down in those rules."

6. The petitioners are the grantees of such leases under Rule 39. Such leases were granted for a period of 10 years. Rule 39 was subsequently omitted by G.O.Ms.No.91 dated 27.6.1996. Subsequently, Rule 8-A has been substituted by G.O.Ms.No.103 dated 13.7.1996. The salient feature of such rule relating to lease of quarries to private persons in respect of granite is the settlement of leases on the basis of tender-cum-auction procedure.

7. While the matter stood thus, the Rules were amended by introducing Rule 8-E vide G.O.Ms.No.603 dated 17.9.1998, which is under challenge.

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8. A bare reading of the Rule 8-E makes the following aspects clear :-

(1) Such rule relates to all lessees who are granted with leases under the erstwhile rule 39 and where leases are still in force.

(2) Such lessees are required to pay one time lease amount.

(3) The Collector of the District shall fix the one-time lease amount as per the principle laid down in the Rules.

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(4) The lease amount fixed shall be proportionate to the extent of the lease-hold land and the period of the lease.

(5) The one-time lease amount shall be paid within sixty days of the date of receipt of demand notice.

(6) On failure to pay, the lease is deemed to be cancelled.

8.1 The principle for fixing the amount is that the grantee under Rule 39 shall pay the highest lease amount paid by any lessee under the tender system introduced in Rule 8-A on 2.9.1989 or under the tender-cum-auction system introduced in Rule 8-A on 13.7.1996, whichever is greater, in respect of same or similar type of mineral in the same taluk. If there is no such quarry with same or similar type of mineral within the same taluk, highest lease amount in respect of the same or similar type of mineral in the adjoining taluk in the same district or the adjoining taluk of an adjoining district, whichever is greater, shall be fixed as the lease amount. If, however, there is no such quarry in the adjoining taluk, the amount in respect of any other quarry with the same or similar type of mineral within the district, shall be the amount payable. Lastly, if there is no such quarry in such district, the lease amount in respect of quarry of similar description in the adjoining district shall be considered as the basis. The lease amount thus fixed shall be proportionate to the extent of the leasehold granted and the period of the lease. Such one time lease amount is required to be paid within sixty days from the date of receipt of the demand notice, where such lessee fails to pay the one time lease amount within the stipulated time indicated in the demand notice, the lease is deemed to have been cancelled for the said default on the expiry of sixty days notice period and thereafter only the authority concerned is required to formally declare that the lease is deemed to have been cancelled and to communicate the same.

9. The attack on such Rules has been mounted through Senior Counsels Mr.V.T. Gopalan, Mr.V.R. Reddy and Mrs. Nalini Chidambaram, mainly on the following grounds :-

(1) As per the provisions contained in the Act, a lessee is only required to pay royalty or dead rent whichever is more and since royalty is being paid in the shape of seigniorage fee and otherwise dead rent is being charged, there is no authority to direct payment of any other amount, more particularly when the provisions contained in the Act do not contemplate payment of any other amount, save and except surface rent, royalty or dead rent and, at any rate introduction of any Rule is ultra vires of Section 15 of the Act, more particularly Section 15(3).

(2) Imposition of excess levy and import is likely to impede the development of minerals, which is the prime object of the statute and, therefore, the Rule making power must be exercised in a manner consistent with the prime object of the Act.

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(3) Even assuming that the State Government has power to amend the Rule introducing payment of certain amount as one-time payment, the impugned G.O., which has the effect of unilaterally affecting the leases already granted for a period of 10 years before 1995, cannot be adversely affected as the subordinate legislation cannot take away by retrospective operation, the right already vested, in the absence of any specific provision to that effect in the parent statute authorising the rule making authority to make rules with retrospective effect.

(4) The basis for fixing the amount payable is also arbitrary and the Government is estopped from enhancing the liability of the leaseholder to pay any additional amount.

10. In the counter affidavit filed on behalf of the State, it has been stated that even though the lessees on the basis of G.O.Ms.No.608 dated 2.9.1989 were required to pay as per the tender procedure and, the lessees after 13.7.1996 are required to pay tender amount on the basis of tender-cum-auction procedure, the lessees under the erstwhile Rule 39 had not paid any such amount and to make good the loss of revenue to the State, it was decided in public interest that one time lease amount should be collected from the lessees quarrying granite in Government ands by introducing Rule 8-E. The amount payable has been directed to be assessed by taking into account the amount payable in respect of quarry relating to same or similar mineral in the same taluk, adjoining taluk or the adjoining district because it is presumed that the mineral in quarries in such adjoining taluk or adjoining district, would be of similar quality and mine area would contain similar quantity and, therefore, it cannot be said that the basis of assessment which are introduced subsequently have no reasonable nexus. It is stated that the rule making power is not confined to making rules for collection of royalty and dead rent but also authorises the Government to frame rules relating to rent, charges, fine, etc., and provision is made within the rule making power and does not contravene any provision of the Act either specifically or even by implication. In the lease deed in respect of the grantees it has been specifically indicated that the lessee is "to bear, pay and discharge all existing and future rates, taxes, assessments, duties, impositions, outgoings, burdens whatsoever imposed or charged upon the demised premises or the produce thereof or the land assessment and the lease amount or dead rent hereby reserved or upon the owner or occupier in respect thereof or payable by either in respect thereof except such charges or impositions as the case is or may hereby be by law exempted from". It is further stated that the impugned provision only makes the condition of the lease in respect of the lessees under Rule 39 at par with lessees under Rule 8-A. The Supreme Court while upholding the validity of Rule 39, had observed that the rule had been framed in the greater interest of mineral development in the State and for better revenue earning from such developmental

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operation and the omission made by the previous Government in not claiming one time lease amount had resulted in loss of revenue to the State instead of better revenue earning and, therefore, the rule should not be considered as arbitrary or unreasonable.

11. On the basis of the aforesaid contentions and counter contentions, the following questions arise for determination :-

(1) Whether the Government has power to introduce or amend any rule providing for payment of lease amount by way of tender or tender-cum-auction ?

(2) Even assuming that the Government has such power, whether such rule can be framed so as to affect the essential conditions of any existing lease, calling upon such lessees to pay any lease amount, which was not contemplated at the time of original grant ?

(3) Whether the basis of assessment as indicated, is arbitrary ?

12. So far as the first question is concerned, it has been contended by learned Senior Counsel Mr.V.T. Gopalan that the corresponding provisions applicable to the Central Government in Sections 5 to 13, and more particularly under the Rules framed by the Central Government, do not envisage payment of any lease amount and such provisions envisage payment only of royalty or dead rent, whichever is more. In this connection, Mr.V.T. Gopalan has emphasised on the provisions contained in Section 15(3). It is submitted by him that Section 15(3) controls the ambit of the rule making power of the State Government. This submission is also bolstered by the learned Senior Counsel Mr.V.R. Reddy.

13. Section 14 of the Act specifically contemplates that the provisions contained in Section 5 to 13 shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals. Therefore, the mere fact that the Central Government in respect of minerals other than the minor minerals does not charge any amount except royalty or dead rent, is not a factor limiting the power of the State Government to make rules providing for payment of lease amount. Even though the State Government may seek inspiration from the provisions contained in the Rules made by the Central Government, in the absence of any specific provision, the State Government is not required to copy the rules made by the Central Government. However, if the rules made by the State Government offend the provisions contained in the Act, to that extent the Rules may not be operative.

14. Under Section 15(1), the State Government is empowered to make rules for regulating the grant of quarry leases and mining leases and other mineral concessions and for the purposes connected therewith. Such rule making power appears to be quite wide in its ambit. Subsequently, introduced Section 15(1A) specifies that the

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rules framed by the State Government may provide for all or any of the matters indicated. It is to be noticed that 15(1A) is without prejudice to the generality of the power contained in Section 15(1) of the Act. Therefore, particular aspects highlighted in 15(1A) can only be considered to be illustrative of the rule making power of the State Government and not necessarily exhaustive. Moreover, Section 15(1A)(d) relates to terms on which, and the conditions subject to which quarry leases, mining leases or other mineral concessions may be granted. Obviously the terms and conditions may envisage payment of any amount to the State for the grant of lease. Similarly, Section 15(1A)(g) relates to fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the manner in which they shall be payable. Since royalty and dead rent have been specifically included, it is obvious that the expression "collection of rent" cannot be equated with collection of royalty or collection of dead rent. Since it is assumed that the State Government is the owner of the minor minerals for parting with its rights and for granting the privilege of exploiting such minor minerals, the State Government can fix the consideration amount for which such mines can be settled with the lessee. It is of course true that the main purpose of the Act is to provide for development and regulation of the mines and minerals. However, it does not mean that while making provisions for such development, the State Government cannot make provisions for collection of amount in respect of minerals found in the land belonging to the State Government.

15. The submission made by the learned Senior Counsels on behalf of the petitioners that Section 15(3) only contemplates payment of royalty or dead rent, and therefore no other amount can be claimed cannot be countenanced. Section 15(3) only contemplates the minimum which is required to be provided. In other words, holder of mining lease is at least required to pay royalty or dead rent whichever is more. Obviously the rules to be framed by the State Government must include provisions relating to payment of royalty or dead rent by the lessee. This, however, does not circumscribe the ambit and the width of the rule making power contained in Section 15(1), 15(1A)(d) and 15(1A)(g). The amount fixed as lease amount can be considered as another form of collection of rent or part of terms and conditions for the lease.

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16. The next question is whether the rule making authority could have framed rules so as to alter the conditions of the existing leases to their detriment. It is contended by the learned Senior Counsels appearing for the petitioners that the rule making power, which is a form of subordinate legislation, cannot be exercised in a manner retrospectively affecting the vested rights. It has been submitted by them that once the lease was granted in

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exercise of power under Rule 39, subject to certain terms and conditions, the lessees acquired a vested right of work in the mines, subject to the provisions contained in the Rules and the conditions indicated in the lease deed and the essential conditions of such lease could not have been subsequently unilaterally changed to the detriment of the grantees.

17. Mr.V.T. Gopalan, learned Senior Counsel, in order to bolster such contention has placed reliance upon the decision of the Supreme Court reported in AIR 1970 SC 1436 (BAIJNATH KEDIA ETC., v. THE STATE OF BIHAR AND OTHERS). In the said case, one Jyoti Prakash Pandey has obtained a registered lease to quarry stone ballast, boulders and chips from the lands belonging to intermediary and the ex-landlords had ceased to have any interest from the date of vesting. By operation of Section 10(1) of the Land Reforms Act, the State of Bihar become lessor, which also subsequently recognised the right of the person concerned and called upon such person to pay rent from the date of vesting till April , 1965 at the rate fixed in the original lease. Subsequently, however, another letter was issued asking for payment of rent at a higher rate on the basis of the rates indicated by the Bihar Minor Mineral Concessions Rules, 1964, which came into force with effect from 27.10.1964. Rule 20 (1) contemplated payment of dead rent, royalty and surface rent at the rates specified in Schedule I and Schedule II. Rule 20(2) provided "On and from the date of commencement of these rules, the provisions of sub-rule (1) shall also apply to leases granted or renewed prior to the date of such commencement and subsisting on such date". Similarly, Section 10 of the Bihar Land Reforms Act was amended by providing that the terms and conditions in regard to the lease of minor minerals stands substituted by the corresponding terms and conditions of the Bihar Minor Mineral Concession Rules. Additional demand and the liability to pay on the basis of the aforesaid provisions was challenged. However, such petition was rejected by the High Court in the decision reported in AIR 1968 Patna 50 and the matter was taken to the Supreme Court. The contention raised before the Supreme Court on amendment of Section 10 of the Bihar Land Reforms Act was that it was ultra vires and Rule 20(2) was also beyond the competence of the State Government as such rule making power of its own force cannot reach mining leases granted in 1955.

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18. So far as lack of legislative competence to amend Section 10 of the Bihar Land Reforms Act is concerned, it was observed by the Supreme Court that in view of declaration contained in Section 2 of the Mines and Minerals (Development & Regulation) Act, 1957, such amendment was beyond the legislative competence as the field was already occupied by the Central Act. So far as Rule 20(2) was concerned, it was observed :-

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21. This leaves for consideration the second sub-rule added to Rule 20 in December, 1964 by the State Government. It will be noticed that the rule as it stood previously applied prospectively to all leases which came to be executed after the promulgation of the rules. The second sub-rule made applicable those provisions to all leases subsisting on the date of the promulgation of the rules. The short question is whether the rules could operate on leases in existence prior to their enactment without the authority of a competent legislature. Vested rights cannot be taken away except under authority of law and mere rule-making power without the support of a legislative enactment is not capable of achieving such an end. There being two legislatures to consider, namely, Parliament and the State Legislature we have first to decide which legislature would be competent to grant such power.

22. We have already held that the whole of the legislative field was covered by the Parliamentary declaration read with the provisions of Act 67 of 1957, particularly S. 15. We have also held that entry 23 of List II was to that extent cut down by entry 54 of List I. The whole of the topic of minor minerals became a Union subject. The Union Parliament allowed rules to be made but that did not recreate a scope for legislation at the State level. Therefore, if the old leases were to be modified a legislative enactment by Parliament on the lines of S. 16 of Act 67 of 1957 was necessary. The place of such a law could not be taken by legislation by the State Legislature as it purported to do by enacting the second Proviso to S. 10 of the Land Reforms Act. It will further be seen that Parliament in S. 4 of Act 67 of 1957 created an express bar although S. 4 was not applicable to minor minerals. Whether S. 4 was intended to apply to minor minerals as well or any part of it applies to minor minerals are questions we cannot consider in view of the clear declaration in Section 14 of Act 67 of 1957 that the provisions of Ss. 4-13 (inclusive) do not apply. Therefore, there does not exist any prohibition such as is to be found in Sec. 4 (1), Proviso in respect of minor minerals. Although Section 16 applies to minor minerals it only permits modification of mining leases granted before October 25, 1949. In regard to leases of minor minerals executed between this date and December 1964 when R. 20 (1) was enacted, there is no provision of law which enables the terms of existing leases to be altered. A mere rule is not sufficient.

...

24. The contention was that modification of existing leases was a separate topic altogether and was not covered by S. 15 of Act 67 of 1957. Therefore if Parliament had not

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said anything on the subject the field was open to the State Legislature. The other side pointed to the words 'and for purposes connected therewith' in S. 15 and contended that those words were sufficiently wide to take in modification of leases. Mr. Lal Narain Sinha's argument is unfortunately not tenable in view of the two rulings of this Court. On the basis of those rulings we have held that the entire legislative field in relation to minor minerals had been withdrawn from the State Legislature. We have also held that vested rights could only be taken away by law made by a competent legislature. Mere rule-making power of the State Government was not able to reach them. The authority to do so must, therefore, have emanated for Parliament. The existing provision related to regulation of leases and matters connected therewith to be granted in future and not for alteration of the terms of leases which were in existence before Act 67 of 1957. For that special legislative provision was necessary. As no such parliamentary law had been passed the second sub-rule to R. 20 was ineffective. It could not derive sustenance from the second Proviso to S. 10 (2) of the Land Reforms Act since that proviso was not validity enacted." (Emphasis supplied)

19. Relying upon such decision, it was contended that the right to quarry lease for 10 years became vested with the petitioners on and from the date of the lease agreement and by retrospectively calling upon such persons to pay certain amount, which was not at all contemplated at the time when the lease was granted (as distinguished from enhancement of seigniorage fee or dead rent), was beyond the rule making power in the absence of any statutory provision authorising the State Government to frame rules with retrospective effect so as to affect the existing rights.

20. Mr.V.T. Gopalan, learned Senior Counsel has fairly brought to our notice the decision of the Supreme Court reported in AIR 1986 SC 1323 (D.K. TRIVEDI AND SONS AND OTHERS v. STATE OF GUJARAT AND OTHERS), wherein it was observed :-

"40. The grant of a mining lease would thus provide for the consideration for such grant in the shape of surface rent, dead rent and royalty. The power to make rules for regulating the grant of such leases would, therefore, include the power to fix the consideration payable by the lessee to the lessor in the shape of ordinary rent or surface rent, dead rent and royalty. If this were not so, it would lead to the absurd result that when the Government grants a mining lease, it is granted gratis to a person who wants to extract minerals and profit

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from them. Rules for regulating the grant of mining leases cannot be confined merely to rules providing for the form in which applications for such leases are to be made, the factors to be taken into account in granting or refusing such applications and other cognate matters. Such rules must necessarily include provisions with respect to the consideration for the grant. Under S. 15(1), therefore, the State Governments have the power to make rules providing for payment of surface rent, dead rent and royalty by the lessee to the Government.

...

45. A proper reading of sub-sec. (3) of S. 15 shows that it does not confer any power upon the State Governments to make rules with respect to royalty. Royalty is payable by the holder of a quarry lease or mining lease or other mineral concession granted under rules made under sub-sec. (1) of, S. 15. What sub-sec. (3) does is to make such holder liable to pay royalty in respect of minor minerals removed or consumed not only by him but also by his agent, manager, employee, contractor or sub-lessee. It thus casts a vicarious liability upon such holder to pay royalty in respect of the acts of persons other than himself. The very fact that under sub-sec. (3) the liability of such holder is to pay, royalty "at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals" shows that the prescribing of the rate of royalty in respect of minor minerals is to be done under the rule-making power of the State Governments which is to be found in sub-sec. (1) of S. 15. Yet another purpose of enacting sub-sec. (3) is to be found in the proviso to that sub-section which prohibits the State Government from enhancing the rate of royalty in respect of any minor mineral for more than once during any period of four years. ...

47. The next contention was that though under S. 15(1) the State Governments may have the power to make rules providing for payment of royalty and dead rent, sub-sec. (3) showed that such power did not extend to amending the rules so as to enhance the rate of dead rent. The submission in this behalf was that the power to enhance the rate of royalty by amending the rules was expressly provided for in sub-sec. (3) by the use of the words "at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals" but there was no such. provision in Sec. 15 with respect to dead rent. We are unable to accept this submission. Rules under S. 15(1), though made by the State Governments, are rules made under a Central Act and the provisions of the General Clauses Act. 1897, apply to such rules. Under S. 21

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of the General Clauses Act, where by any Central Act, a power to make rules is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any rules so made. The power to amend the rules is therefore, comprehended within the power to make rules and as S. 15(1) confers upon the State Governments the power to make rules providing for payment of dead rent and royalty, it also confers upon the State Governments the power to amend those rules so as to alter the rates of royalty and dead rent so prescribed, either by enhancing or reducing such rates. The source of the power to enhance the rate of royalty is not contained in sub-sec. (3) of S. 15 as submitted at the Bar. As pointed out earlier, the purpose of inserting the said sub-sec. in S. 15 with retrospective effect was entirely different one."

21. Learned Senior Counsel has submitted by relying upon the decision reported in AIR 1988 Karnataka 34 (STATE OF KARNATAKA v. K.M. MADHUSUDHAN), that the later decision of the Supreme Court in AIR 1986 SC 1323 (cited supra) cannot be followed in preference to the Constitution Bench decision in AIR 1970 SC 1436 (cited supra). In AIR 1988 Karnataka 34, it was observed :-

"9. This brings us to the next question as to the effect of the observations of their Lordships in Trivedi's case which have been reproduced above, that the power to make rules under S.15(1) would include the power to enhance the rate of dead rent during the subsistence of the leases. Apparently these observations are contrary to the view enunciated in Baijanath's case (AIR 1970 SC 1436) wherein it has been held that the subordinate legislation cannot affect the vested rights. In view of this apparent conflict we have to find out as to which view should ' be followed.

...

In view of the aforesaid observations of the Supreme Court the view in Baijnath's case being of a larger Bench has to be preferred over the view in Trivedi's case which is of a smaller Bench. In this view of the matter, following the law laid down in Baijnath's case we hold that the power to fix the rate of dead rent is a subordinate legislative power flowing from Sub-S. (1) of S.15, that the revised rate cannot be made applicable to the lease deeds in which the rate of dead rent payable by the concerned lessee has been incorporated, as that is a vested right and therefore cannot be affected by subordinate legislation, and that the impugned notification by which the rates of dead rent are revised cannot be enforced against the writ

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petitioners as they are governed by the rates which existed then and which formed one of the conditions of leases."

22. Though in the first glance it may appear as if there is conflict of opinion between the two decisions, in our considered opinion, on a careful reading, there is no real conflict. The rules under which leases are granted contemplate payment of royalty and dead rent as prescribed from time to time. It goes without saying that the contracts or the lease documents are based on such provisions contained in the Rules and these envisage that royalty and dead rent can either be reduced or enhanced. In fact, Section 15(3) itself contemplates that royalty and dead rent can be enhanced, but such enhancement can be only once in three years. However, the ratio of decision of the Supreme Court in AIR 1986 SC 1323(cited supra) cannot be made applicable to levy additional lease amount which was not contemplated at the time of lease. On the other hand, the ratio of the decision in Baijnath's case is applicable as in the present case, the rule has the effect of changing the essential conditions of the lease, even though it was not so contemplated at the time of the grant of lease.

23. The question can be looked from another point of view. If at the time of grant of lease under Rule 39 it would have been indicated that the lease would be granted on the basis of the auction, it is quite possible that the person concerned would not have applied for taking any such lease. It is not for us to consider at this stage whether it was prudent on the part of the then State Government to grant such leases by exercising discretionary power under Rule 39 without insisting upon the tender procedure which was in vogue for grant of other normal leases. Whether in a given case the grant of lease itself was arbitrary or improper is not a matter for consideration before us. Having granted lease upon certain terms and conditions under Rule 39, it is not open to the State Government to turn around at a later stage when the leases become operational to impose fresh conditions which would go to the very root of the matter. Enhancement of the royalty or dead rent at least once within a period of three years itself is contemplated in the statute and the rules as well as the contract. The rule imposing a condition relating to payment of additional amount was not contemplated. Therefore, making such a rule so as to affect the existing leases appears to be beyond the jurisdiction of the rule making authority.

24. In this connection, the decision of the Supreme Court reported in (2006) 4 SCC 517 (STATE OF TAMIL NADU AND ANOTHER v. P. KRISHNAMURTHY AND OTHERS) cited by Mr.V.R. Reddy may also be

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noticed. In the said case, by introducing Rule 38-A, whereunder the rule making authority created a monopoly relating to sand mining in favour of the State Government, the existing leases were also terminated. While upholding the right of the State Government to create a monopoly, the Supreme Court observed :-

> "26. The old Section 4-A enabled the termination of lease either by the Central Government or by the State Government (in consultation with the other) only for the purpose of granting a fresh lease in favour of any government company/corporation owned by such Government, if it was of the opinion that it was expedient in the interest of regulation of mines and mineral development to do so. Though old Section 4-A did not provide for a hearing before termination, this Court read such a requirement into the section. On the other hand, present Section 4-A (substituted by Act 37 of 1986) enables the Central Government to request the State Government to terminate a mining lease in regard to any mineral (other than a minor mineral) and also enables the State Government to terminate a mining lease in regard to any minor mineral, where the Government concerned is of the opinion that it is expedient in the interest of the regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communication or to ensure safety of buildings, monuments, or other structures (and also additionally on the ground of conservation of mineral resources or for maintaining safety in the mines in the case of minerals other than minor minerals) or for such other purposes, by making an order of premature termination. Granting a lease in favour of a government company/corporation is no longer a purpose for which an existing lease could be terminated under Section 4-A. In fact, along with substitution of Section 4-A by Act 37 of 1986 with effect from 10-2-1987, a new section (Section 17-A) was introduced which provides for reservation of any area for the purpose of granting of a mining lease to a government company or corporation provided such area is not already held under a mining lease. The ground on which a lease could be prematurely terminated under old Section 4-A and the grounds on which a lease can be terminated under new Section 4-A are completely different. Though the grounds for premature termination have changed in Section 4-A, the principle laid down in Ram Kishan11 that premature termination of lease under Section 4-A, after giving a hearing to the lessee is an executive act and not legislative act, however, continues to hold good. Therefore, the act of termination of a mining lease, even under the new Section 4-A, is an executive act.

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. . .

29. When the Act is read as a whole, the legislative intent is clear that a lease once validly granted cannot be terminated prematurely without a notice and hearing. The reason is obvious. Exercise of power of termination will have civil consequences adversely affecting the interest of the leaseholders. We may refer to the three sections inserted by Act 37 of 1986 with effect from 10-2-1987, in this behalf. Section 24-A deals with the rights and liabilities of a holder of a mining lease. It provides that on issue of a mining lease under the Act or the Rules made thereunder, it shall be lawful for the holder of such lease, to enter upon the leased land, at all times during its currency for carrying on mining operations. Sub-sections (1) and (2) of Section 4-A contemplate premature termination only when the Government concerned is of the view that it is expedient to do so, in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, to prevent pollution or to avoid danger to public health or communication or to ensure safety of buildings, monuments or other structures or for such other purposes. Sub-section (3) of Section 4-A prohibits any order of a premature termination of a mining lease being made, without giving a hearing to the leaseholder. The Act does not contemplate wholesale termination of all existing leases/permissions in relation to a minor mineral without hearing. Section 17-A while empowering the Central Government to reserve areas for purposes of conservation of minerals, and empowering the Central/State Government to reserve areas for mining operation by government companies/corporations, specifically exclude areas already held under mining leases. Even, Section 17 while referring to the power of the Central Government to undertake mining operations exclusively in any area, excludes areas already held under mining leases. It is, thus, clear that the Act extends a statutory protection to the holder of a mining lease to carry on mining operations during the period of lease, in terms of the lease deed. The Act further contemplates premature termination only for the reasons stated in sub-section (1) or (2) of Section 4-A and in the manner provided in sub-section (3) of Section 4-A. There is no doubt that the legislature can make a provision in the statute itself for termination of the mining leases without observance of the principles of natural justice. It did not choose to do so. When the Act assures the lessee the right to carry on mining operations during the entire period of lease and provides for termination only after giving a

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hearing, the delegate cannot, while making a rule in exercise of the power granted under the Act, make a provision for termination of all leases relating to a particular minor mineral, without giving an opportunity of hearing to the lease/permission-holders. That part of Rule 38-A which purports to terminate all leases forthwith, without notice or hearing to the lessees, does not conform to the object, scheme and the provisions of the Act under which it is made and therefore, invalid. Borrowing the words of Russell of Killowen, C.J., we may as well say Parliament never intended to give authority to make such a rule."

and ultimately directed as follows :-

"37. ... (ii) That part of Rule 38-A which purports to terminate quarrying leases / permissions forthwith (from 2-10-2003) is read down in terms of para 26 above. ..."

25. As a matter of fact, in the present impugned rule it is indicated that unless the amount is paid within 60 days, such lease shall be deemed to have been cancelled on 61st day. As per the Rules, such leases could be terminated by six months notice. In view of the fact that by virtue of the stay order passed, the lessees were allowed to continue and practically all of them have completed the period of lease, the method adopted by the Supreme Court cannot be applied in the present cases. However, the ratio of the decision of the Supreme Court is indicative of the fact that essential terms of the lease cannot be unilaterally altered by the rule making authority.

26. Learned Advocate General appearing for the State has contended that there is a presumption of constitutionality regarding subordinate legislation. As a matter of fact, this position has been clarified in the decision already cited. Moreover, a similar view has been expressed in (2003) 3 SCC 321 (ST. JOHNS TECHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANOTHER).

27. The mere fact that presumption of constitutionality is attached does not mean that in no case the subordinate legislation can be held to be invalid. In the present case, the subordinate legislation being arbitrary in the sense that it sought to take away the vested right, has to be declared as illegal and ultra vires.

28. Learned Advocate General has also sought to distinguish AIR 1970 SC 1436 by referring to the decision of the Supreme Court in (2002) 9 SCC 232 (ITC LTD. v. AGRICULTURAL PRODUCE MARKET

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COMMITTEE AND OTHERS).

In the present case, we are not actually concerned with the question as to whether there is any scope for the State to enact any law. Since the question raised is not regarding the competence of the State Government to enact any law, but competence of the State Government to frame any rule affecting vested rights without the support of the provisions of the Act, the decisions relied upon by the learned Advocate General is of no assistance.

29. Learned Advocate General has also invited our attention to the subsequent decision of the Supreme Court reported in (2000)8 SCC 655 (THE QUARRY OWNERS ASSOCIATION V. THE STATE OF BIHAR AND OTHERS), wherein the decision reported in AIR 1986 SC 1436 (cited supra) was explained and followed. The question decided in the subsequent decision was relating to validity of Section 15 itself as it was contended that there was excessive delegation. Such a question need not detain us as it is not relevant for the present case.

30. In the above view of the matter, though it cannot be said that the State Government has no right to levy any amount as lease amount or consideration for grant of leases after introduction of such rule, in the facts of the present case, it can be said that the provisions contained in Rule 8-E are inoperative because the State Government did not have the right to frame Rules directing collection of lease amount in respect of leases which had already vested with the lessees. It is of course true that the State government could have issued notice terminating such leases by giving six months notice. However, it was not the intention of the State to terminate the leases. Moreover, as already indicated, by virtue of stay order, the lessees were allowed to carry on the quarrying operation and the normal period has come to an end.

31. The contention raised by the learned Senior Counsel Mrs. Nalini Chidambaram that the method of computation of lease amount is arbitrary, appears to be prima facie acceptable. Such amount is directed to be fixed on the basis of the highest tender/bid amount in respect of similar mines in the same taluk, adjoining taluk in the same district or even in the adjoining district. The amount offered in a tender or in an auction depends upon many imponderable circumstances, such as quality and quantity of the minerals available or perceived to be available. Even at times it may depend upon the mutual competitiveness of the different tenderers or bidders and it cannot be assumed that in all cases the amount offered for adjoining quarry is a reasonable guideline for fixing the amount. However, since it is already held that the provisions contained in Rule 8-E
are inoperative, it is not necessary to delve further into such

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aspect.

32. For the aforesaid reasons, all the writ petitions are allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

1. The Secretary to Government,
State of Tamil Nadu,
Industries Department,
Fort St. George, Chennai 600 009.

2. The Director Collector,
Dharmapuri, Dharmapuri District.

3. The District Collector,
Villupuram,
Villupuram District.

4. The District Collector
Krishnagiri,
Krishnagiri District

5. The District Collector,
Namakkal,
Namakkal District

6. The District Collector,
Vellore,
Vellore District

7. The District Collector,
Pudukkottai,
Pudukkottai District.

8. The Deputy Director of Mines,
Dharmapuri

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9. The District Collector, Karur
Karur District

10. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

11.The Assistant Director of Geology & Mining
Krishnagiri

12. Assistant Director of Geology & Mining,
Villupuram.

13. The District Collector,
Erode , Erode district.

14. The District Collector, Madurai,
Madurai District.

15. The Commissioner of Geology and Mining,
Industrial Estate, Guindy, Chennai 32.

16. The Director of Geology & Mining
Industrial Estate,
Guindy, Chennai - 32

17. The Deputy Director of Geology & Mining
95, Sankari Nagar,
Salem - 7.

1 cc to Government Pleader, Sr. 65057
1 cc to Mr.V. Sanjeevi, Advocate, Sr. 64969
2 ccs to Mr.M. Muthappan, Advocate, sr. 65002 & 65003
5 ccs to Mr.K. Ramakrishna Reddy, Advocate, sr. 64953
1 cc to mr.S. Silambanan, Advocate, Sr. 64609



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